

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Detroit, Toledo & Ironton Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement between The Detroit, Toledo & Ironton Railroad Company and the Brotherhood of Maintenance of Way Employees effective April 1, 1942, together with supplements and amendments thereto, when it failed and refused to bulletin the position of Work Equipment Foreman at Flat Rock, Michigan to employees covered thereby, but instead assigned the duties thereof to a Grand Trunk Western Railroad Company employee.

(2) As a consequence of the aforesaid violation, Mr. G. Brown shall be allowed the difference between the Work Equipment Foreman's rate and what he was paid in a lower rated position beginning June 18, 1984 and continuing until the position referred to in Part (1) hereof is bulletined and assigned to the senior applicant therefor."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

By Agreement dated April 9, 1984, the Carrier transferred two positions and their incumbents from Napoleon, Ohio, to Flat Rock, Michigan, effective May 7, 1984. The incumbent of the Repair Foreman position, however, elected not to follow his work and exercised his seniority to another job. When the Repair Foreman position was not rebulletined by August 3, 1984, the Organization filed this claim to the Acting Division Engineer, who never responded. An abolishment notice was issued on September 14, 1984, advising

that the vacant position was abolished on May 7, 1984. When the claim was subsequently appealed to the Chief Engineer, he allowed the claim up until September 14, 1984, referring to the time limit violation. As a result of the allowance, that portion of the claim is dismissed. No further relief may be had as a result of the time limit violation because the job ceased to exist on September 14, 1984. Any other result would have the effect of requiring the Carrier to establish and maintain a position which is beyond the authority of this Board.

To prevail on the merits in this case, the Organization has the burden of showing that the Carrier was obligated by agreement to have particular machines maintained and repaired by employees covered by the Agreement. They assert the machines which were repaired at Napoleon prior to May 7, 1984, were being sent to Durand, Michigan, to be repaired by employees covered by the GTW Agreement. The Carrier asserts that subsequent to its December 31, 1983, merger into the Grand Trunk Western Railroad, its equipment was utilized throughout the merged system, as was the equipment of the former GTW. No rule has been cited by the Organization which would restrict the Carrier from using or repairing such equipment anywhere on the merged system. Accordingly, the portion of the claim not already allowed on the property is denied.

A W A R D

Claim disposed of in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1989.